

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1708

By: Bergstrom

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6 AS INTRODUCED

7 An Act relating to occupational regulations;
8 establishing a process to review criminal records to
9 reduce offenders' disqualifications from state
10 occupational recognition; defining terms;
11 establishing certain fundamental right; limiting
12 review of criminal records; prohibiting automatic bar
13 based on criminal record; consideration of certain
14 convictions; excluding certain information from
15 certain records review; permitting certain
16 circumstances be reviewed; providing rule of lenity;
17 permitting certain hearing under Administrative
18 Procedures Act; providing certain totality of
19 circumstances test; allowing appeals; authorizing
20 certain petition prior to meeting certain
21 qualifications; setting petition contents,
22 determination, decision, binding effects, alternative
23 decision, reapplication, appeal and costs; requiring
24 certain reporting; construing private certifications;
25 providing for codification; and providing an
26 effective date.

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29 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

30 SECTION 1. NEW LAW A new section of law to be codified
31 in the Oklahoma Statutes as Section 803 of Title 40, unless there is
32 created a duplication in numbering, reads as follows:

33 This act shall be known and may be cited as the "Criminal
34 Records Review for Licensing Act".
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1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 803.1 of Title 40, unless there
3 is created a duplication in numbering, reads as follows:

4 Definitions. For the purposes of this act, the words defined in
5 this section have the following meaning:

6 1. "Government Certification" or "Certification" means a
7 voluntary program in which the state government grants
8 nontransferable recognition to an individual who meets personal
9 qualifications established by the Legislature. Upon receiving
10 initial and continuing approval from the government, the individual
11 may use "government certified" or "state certified" as a designated
12 title. A non-certified individual may also perform the lawful
13 occupation for compensation but may not use the title "government
14 certified" or "state certified". In this act, the term "government
15 certification" is not intended to be synonymous with "occupational
16 license" or to reflect credentials, such as those used for medical
17 board certification or held by a certified public accountant, which
18 are prerequisites to working lawfully in an occupation.

19 2. "Lawful occupation" means a course of conduct, pursuit or
20 profession that includes the sale of goods or services that are not
21 themselves illegal to sell irrespective of whether the individual
22 selling them is subject to an occupational regulation.

23 3. "Occupational license" means a nontransferable authorization
24 in law for an individual to perform exclusively a lawful occupation

1 for compensation based on meeting personal qualifications
2 established by the legislature. In an occupation for which a
3 license is required, it is illegal for an individual who does not
4 possess a valid occupational license to perform the occupation for
5 compensation.

6 4. "Occupational regulation" means a statute, rule, practice,
7 policy, or other state law that allows an individual to use an
8 occupational title or work in a lawful occupation. It includes a
9 government certification and occupational license. It excludes a
10 business license, facility license, building permit, or zoning and
11 land use regulation except to the extent those state laws regulate
12 an individual's personal qualifications to perform a lawful
13 occupation.

14 5. "Personal qualifications" means criteria related to an
15 individual's personal background and characteristics including
16 completion of an approved educational program, satisfactory
17 performance on an examination, work experience, other evidence of
18 attainment of requisite skills or knowledge, criminal record and
19 completion of continuing education.

20 6. "State recognition" means the government's grant or renewal
21 of an occupational title or authorization to work in a lawful
22 occupation. It includes government certification, an occupational
23 license and other recognition of an individual's personal
24 qualifications.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 803.2 of Title 40, unless there
3 is created a duplication in numbering, reads as follows:

4 Fundamental Right. The right of an individual to pursue an
5 occupation is a fundamental right.

6 SECTION 4. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 803.3 of Title 40, unless there
8 is created a duplication in numbering, reads as follows:

9 Review of a Criminal Record.

10 A. Application. Except as otherwise provided by law, a board,
11 agency, department or other state agency (hereafter "board") may use
12 this act to deny, diminish, suspend, revoke, withhold or otherwise
13 limit state recognition because of a criminal conviction.

14 B. No automatic bar. A board will not automatically bar an
15 individual from state recognition because of a criminal record but
16 will provide individualized consideration.

17 C. Information from a criminal record to be considered. A
18 board may consider only a conviction of a non-excluded crime that is
19 a felony or violent misdemeanor.

20 D. Excluded information from a criminal record. A board will
21 not consider:

22 1. Non-conviction information from the criminal justice system
23 including information related to a deferred adjudication,

1 participation in a diversion program, or an arrest not followed by a
2 conviction;

3 2. A conviction for which no sentence of incarceration can be
4 imposed;

5 3. A conviction that has been sealed, dismissed, expunged or
6 pardoned;

7 4. A juvenile adjudication;

8 5. A non-violent misdemeanor; or

9 6. A conviction that occurred more than three (3) years before
10 the date of the board's consideration except for a conviction of a:

11 a. felony crime of violence pursuant to Section 571 of
12 Title 57 of the Oklahoma Statutes,

13 b. felony related to a criminal sexual act pursuant to
14 Title 21 of the Oklahoma Statutes, or

15 c. felony related to a criminal fraud or embezzlement
16 pursuant to Title 21 of the Oklahoma Statutes.

17 E. Included information. The board will consider the
18 individual's current circumstances including:

19 1. The age of the individual when the individual committed the
20 offense;

21 2. The time since the offense;

22 3. The completion of the criminal sentence;

23 4. A certificate of rehabilitation or good conduct;

1 5. Completion of, or active participation in, rehabilitative
2 drug or alcohol treatment;

3 6. Testimonials and recommendations including a progress report
4 from the individual's probation or parole officer;

5 7. Other evidence of rehabilitation;

6 8. Education and training;

7 9. Employment history;

8 10. Employment aspirations;

9 11. The individual's current family responsibilities; and

10 12. Other information that the individual submitted to the
11 board.

12 F. Rule of lenity.

13 1. An ambiguity in an occupational regulation relating to a
14 board's use of an individual's criminal record will be resolved in
15 favor of the individual.

16 2. The board will not use a vague term in its consideration and
17 decision including:

18 a. good moral character,

19 b. moral turpitude, or

20 c. character and fitness.

21 G. Hearing.

22 The board will hold a public hearing, should the individual
23 request one, pursuant to the Administrative Procedures Act.

24 H. Totality of the circumstances test.

1 1. The board may deny, diminish, suspend, revoke, withhold or
2 otherwise limit state recognition only if the board determines:

3 a. the state has an important interest in the regulation
4 of a lawful occupation that is directly, substantially
5 and adversely impaired by the individual's non-
6 excluded criminal record as mitigated by the
7 individual's current circumstances in subsection E of
8 this section, and

9 b. the state's interest outweighs the individual's
10 fundamental right to pursue a lawful occupation.

11 2. The board has the burden of making its decision by clear and
12 convincing evidence.

13 I. Appeal.

14 The individual may appeal the board's decision as provided for
15 in the Administrative Procedures Act.

16 SECTION 5. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 803.4 of Title 40, unless there
18 is created a duplication in numbering, reads as follows:

19 Petition for Board Determination Prior to Obtaining Personal
20 Qualifications.

21 A. Petition. An individual with a criminal record may petition
22 a board at any time, including before obtaining any required
23 personal qualifications, for a decision whether the individual's
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1 criminal record will disqualify the individual from obtaining state
2 recognition.

3 B. Content. The individual will include in the petition the
4 individual's criminal record or authorize the board to obtain the
5 individual's criminal record.

6 C. Determination. The board will make its decision using the
7 criteria and process in Section 4 of this act.

8 D. Decision. The board will issue its decision no later than
9 sixty (60) days after the board receives the petition or no later
10 than ninety (90) days after the board receives the petition if a
11 hearing is held. The decision will be in writing and include the
12 criminal record, findings of fact and conclusions of law.

13 E. Binding effect. A decision concluding that state
14 recognition should be granted or granted under certain conditions is
15 binding on the board in any later ruling on state recognition of the
16 petitioner unless there is a relevant, material and adverse change
17 in the petitioner's criminal record.

18 F. Alternative advisory decision. If the board decides that
19 state recognition should not be granted, the board may advise the
20 petitioners of actions the petitioner may take to remedy the
21 disqualification.

22 G. Reapplication. The petitioner may submit a revised petition
23 reflecting completion of the remedial actions before a deadline the
24 board sets in its alternative advisory decision.

1 H. Appeal. The petitioner may appeal the board's decision as
2 provided for in the Administrative Procedures Act.

3 I. Reapply. The petitioner may submit a new petition to the
4 board not before one year following a final judgment on the initial
5 petition or upon obtaining the required personal qualifications,
6 whichever is earlier.

7 J. Cost. The board may charge a fee to the petitioner to
8 recoup its costs not to exceed One Hundred Dollars (\$100.00) for
9 each petition.

10 SECTION 6. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 803.5 of Title 40, unless there
12 is created a duplication in numbering, reads as follows:

13 Reporting.

14 A. The Department of Labor will establish an annual reporting
15 requirement of the:

16 1. Number of times that each board acted to deny, diminish,
17 suspend, revoke, withhold or otherwise limit state recognition from
18 a licensed individual because of a criminal conviction;

19 2. Offenses for which each board acted in paragraph 1 of this
20 subsection;

21 3. Number of applicants petitioning each board under Section 5
22 of this act;

23 4. Numbers of each board's approvals and denials under Section
24 5 of this act,

1 5. Offenses for which each board approved or denied petitions
2 under Section 5 of this act, and

3 6. Other data the Department determines.

4 B. The Department will compile and publish annually a report on
5 a searchable public website.

6 SECTION 7. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 803.6 of Title 40, unless there
8 is created a duplication in numbering, reads as follows:

9 Limitation. Nothing in this act shall be construed to require a
10 private certification organization to grant or deny private
11 certification to any individual.

12 SECTION 8. This act shall become effective November 1, 2020.

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